The Competitive Carriers Association

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May 24, 2012

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Written Ex Parte Communications
WT Docket 11-186

Dear Ms. Dortch:

RCA—The Competitive Carriers Association ("RCA") hereby responds to the supplemental reply comments filed by AT&T on April 30, 2012[1] regarding the Commission's next mobile wireless competition report (the "*Sixteenth Report*").[2] RCA is an association representing more than 100 competitive wireless providers across the United States. Most of RCA's members serve fewer than 500,000 customers. RCA's role as the leading voice for competitive wireless carriers on legal and policy issues gives it a unique perspective on the state of wireless competition.

As RCA previously described in this proceeding, the mobile wireless industry is becoming a *de facto* duopoly – with AT&T and Verizon as the dominant players.[3] In fact, the Commission in its two most recent Wireless Competition Reports has been unable to certify that the wireless industry is characterized by effective competition.[4] And the problem is getting steadily worse. The Commission should continue to recognize this in the *Sixteenth Report* so that it can take action preventing the two largest carriers from restricting access to critical inputs – such as spectrum, devices, commercially reasonable roaming arrangements, and economical special access rates. Otherwise, this trend will continue to consumers' detriment. AT&T's recent attack on RCA and its

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1 Supplemental Reply Comments of AT&T, WT Docket No. 11-186 (filed Apr. 30, 2012) ("AT&T Supplemental Comments").

2 *See Wireless Telecommunications Bureau Seeks Updated, Year-End 2011 Data for its Sixteenth Report on Mobile Wireless Competition*, Public Notice, WT Docket No. 11-186, DA 12-405 (rel. March 14, 2012 (seeking to update the record informing the *Sixteenth Report*).

3 *See, e.g.*, Comments of RCA—The Competitive Carriers Association, WT Docket No. 11-186, at 4-10 (filed Dec. 5, 2011) ("RCA Initial Comments"); Comments of RCA—The Competitive Carriers Association, WT Docket No. 11-186, at 1 (filed Apr. 13, 2012) ("RCA Supplemental Comments").

4 *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd. 11407, 11435 ¶16 (2010); *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fifteenth Report, 26 FCC Rcd. 9664, 9691 ¶ 14 (2011).

member, T-Mobile USA, Inc. ("T-Mobile"), is a one-sided, narrow view of the mobile marketplace and fails to demonstrate why the Commission should deviate from the last two wireless competition reports. To the contrary, AT&T continues to provide the Commission with justification to find that the market is not competitive and to take regulatory action to enhance competition.

AT&T Paints a Misleading Picture of the Mobile Wireless Marketplace.

AT&T claims that CTIA's recently released industry survey shows that "the wireless industry is more competitive than ever."[5] It is true that the CTIA study shows growth in estimated subscriber connections, service revenues, and customer usage.[6] However, this growth does not equate to competition. In fact, as a result of control over all critical industry inputs (spectrum, devices, commercially reasonable roaming arrangements, and economical special access rates), this growth occurred mostly within the duopoly. Despite our members having some of the highest customer service ratings in the industry,[7] RCA's own internal benchmark survey revealed that the lifetime value of RCA member customers lags behind that of the larger carriers.[8] Further, the Commission considers growth and competition as two separate market characteristics, and therefore often examines them separately.[9] Similarly, in its last two mobile wireless competition reports, the Commission found that there was growth in the number of wireless subscribers and revenues, but correctly declined to find that the wireless industry was competitive.[10] Growth alone does not

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5 AT&T Supplemental Comments at 1.

6 *See Annualized Wireless Industry Survey Results*, CTIA-The Wireless Association, *available at* http://files.ctia.org/pdf/CTIA_Survey_Year_End_2011_Graphics.pdf; AT&T Supplemental Comments at 1-2.

7 *See* Press Release, J.D. Power and Associates, Fifty Brands Named J.D. Power 2012 Customer Service Champions, Mar. 14, 2012, http://businesscenter.jdpower.com/news/pressrelease.aspx?ID=2012029 (naming U.S. Cellular and MetroPCS among its Customer Service Champions).

8 RCA's benchmark survey analyzed the projected revenue that an RCA customer will generate during a certain period of time. Lifetime value represents a dollar value associated with the long term relationship with any given customer, revealing how much a customer relationship is worth over a period of time. RCA attributes this discrepancy to lack of access to 4G spectrum, and for its smaller carriers, lack of access to 4G LTE smartphones and higher device subsidy costs.

9 *See Provision of Directory Listing Information Under the Communications Act of 1934, As Amended; the Use of N11 Codes and Other Abbreviated Dialing Arrangements; Administration of the North American Numbering Plan*, Notice of Proposed Rulemaking, 17 FCC Rcd 1164, ¶ 19 (2002) (seeking comment on proposed methods of promoting competition and choice in the retail directory assistance market, particularly on reports and other relevant studies "that measure the growth or decline of services *and* competition in the [dialing arrangement] market") (emphasis added); *see also Common Carrier Bureau Releases Report to Monitor Impacts of Universal Service Support Mechanisms*, Public Notice, DA 98-2540, 19 FCC Lexis 6547, ¶ 18 (1998) (observing that data in presubscribed lines is useful "both as a measure of network growth and as a measure of competition in the interexchange market").

10 *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including*

necessarily indicate a healthy competitive marketplace. To the contrary, improving competition could stimulate even more growth and better services for consumers.[11]

AT&T's assertion that carriers' infrastructure spending shows that the wireless marketplace is competitive is similarly misleading.[12] While carriers continue to invest in upgrading their networks,[13] the degree of investment is, in fact, *constrained* by the lack of access to sufficient

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Commercial Mobile Services, Fifteenth Report, 26 FCC Rcd 9664, ¶ 2 (2011) ("*Fifteenth Report*") (noting that total revenue generated by the mobile wireless industry has been growing consistently, but that "annual revenue growth rates in recent years . . . have been slowing – 2009 revenues were three percent greater than 2008, as contrasted with almost seven percent growth between 2007 and 2008"); *id.* ¶ 175 ("[A]s the wireless industry has reached penetration levels exceeding 90 percent of the U.S. population, the growth of net new mobile wireless connections has decelerated in recent years."); *see also Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd 11407, ¶ 2 (2010) (declining to find the wireless market competitive, noting that although "the wireless industry has reached penetration levels nearing 90 percent of the U.S. population, the growth of net new subscribers has decelerated").

11 *See, e.g.*, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd 5411, ¶ 31 (2011) ("With the added investment and deployment of broadband services by multiple providers, additional benefits will result from increased competition. . . . The benefits of competition include likely lower prices for such services, which will result in direct consumer surplus as well as greater utilization of broadband data services. In addition, less expensive mobile broadband services increase the availability of these services to consumers, which in turn creates incentives for edge providers to develop innovative new services that use this capability. Although the benefits cannot be calculated with precision, a rough estimate is that the benefits from the increased competition would be in the billions of dollars per year."); *Amendment of Parts 1, 2, 22, 24, 27, 90 and 95 of the Commission's Rules to Improve Wireless Coverage Through the Use of Signal Boosters*, Notice of Proposed Rulemaking, 26 FCC Rcd 549, ¶ 11 (2011) (noting that increased competition can benefit consumers through lower prices and "dynamic growth in the variety and quality of wireless service offerings").

12 *See* AT&T Supplemental Comments at 2; *CTIA 2011 Report*.

13 *See, e.g.*, Dan Meyer, *C Spire Unveils LTE Plans*, RCR WIRELESS (March 8, 2012), *available at* http://www.rcrwireless.com/article/20120308/carriers/c-spire-unveils-lte-plans/ (reporting that C Spire Wireless plans "to invest $60 million in providing coverage to 20 Mississippi markets covering 2,700 square miles and approximately 1.2 million potential customers with 360 LTE-enabled cell sites" as a result of the 700 MHz spectrum assets it picked up in the 2008 auction"); T-Mobile Release, *T-Mobile USA Announces Reinvigorated Challenger Strategy* (Feb. 23, 2012), *available at* http://newsroom.t-mobile.com/articles/ReinvigoratedChallengerStrategy (announcing that T-Mobile is investing in a "$4 billion network modernization and 4G evolution effort that will pave the way for LTE service for its customers in 2013"); Nicholas Kolakowski, *Sprint CEO Hesse Says WiMax Investment Needed for Speed*, EWEEK.COM (March 24, 2012), *available at* http://www.eweek.com/c/a/IT-Infrastructure/Sprint-CEO-Hesse-Says-WiMax-Investment-Needed-for-Speed-518284/ (asserting that Sprint's decision to invest $1 billion in WiMax 4G technology, as opposed to LTE – which Sprint believes will dwarf WiMax as a 4G standard, was because of its spectrum position and the need to quickly create a footprint in the U.S.-based 4G market).

additional spectrum and 4G LTE devices for competitors of the two largest carriers.[14] As RCA and T-Mobile have pointed out, one of the ways to promote competition is to ensure that all carriers have adequate spectrum capacity.[15] If the Commission acts to correct the competitive imbalances in the spectrum marketplace and free additional spectrum for mobile broadband services, carriers would be able to spend even more on new infrastructure and network improvements, thus driving industry growth and competition.[16]

Additionally, as described below, the lack of interoperability in the Lower 700 MHz band is stranding nearly $2 billion dollars in investment. RCA urges the Commission to use its latest analysis of wireless competition as a catalyst to pursue pro-competitive policies that will level the playing field, ensure access to critical inputs, and spur investment and innovation.

The FCC Should Take Specific and Limited Regulatory Actions to Ensure That the Mobile Wireless Marketplace Is Competitive.

AT&T claims that RCA's and T-Mobile's recommendations in this proceeding are intended to "erect new obstacles to efficient spectrum use."[17] RCA opposes unnecessary regulation and does not believe that the FCC has unrestricted authority to regulate every aspect of wireless service. However, in this case, limited regulation – supported by existing Commission authority, grounded in the public interest, and warranted by the competitive situation – is needed to ensure that competition is restored to the wireless marketplace. Therefore, in the *Sixteenth Report*, the Commission should recognize that regulatory action is necessary.

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[14] *See, e.g.*, Steven Russolillo, *Sprint Bankruptcy Filing 'Very Legitimate Risk', Bernstein Says*, WALL STREET JOURNAL (March 19, 2012), *available at* http://blogs.wsj.com/marketbeat/2012/03/19/sprint-bankruptcy-filing-very-legitimate-risk-bernstein-says-2/ ("The problem is 4G. Sprint doesn't have enough free-and-clear spectrum on which to launch a competitive LTE network . . . "); Richard Lawler, *T-Mobile Lost More Customers in Q4, Will Launch LTE in 2013 with AWS Spectrum from AT&T*, ENGADGET (Feb. 23, 2012), *available at* http://www.engadget.com/2012/02/23/t-mobile-lost-more-customers-in-q4-will-launch-lte-in-2013-with/ (indicating that T-Mobile is able to launch LTE services in 2013 solely because of the AWS spectrum it is receiving from the terminated AT&T/T-Mobile transaction).

[15] *See, e.g.*, Comments of T-Mobile USA, Inc., WT Docket No. 11-186, at 3 (filed Apr. 13, 2012) ("T-Mobile Comments") ("*First and foremost*, the Commission should take steps to ensure that all carriers have access to sufficient lower-band spectrum to compete on equal footing with the largest two carriers and to prevent undue spectrum concentration.") (emphasis in original); RCA Supplemental Comments at 5 ("Spectrum warehousing cannot stand, especially when all carriers need additional spectrum to keep up with customers' data demands. The FCC must appropriately weigh the impact of further spectrum aggregation by the two largest carriers with the need for robust countermeasures to ensure a competitive balance in the marketplace."); RCA Initial Comments at 11 ("Competitive carriers need spectrum, primarily low-band spectrum, that is interoperable and free from interference to bring next generation services to their customers.").

[16] *See, e.g.*, T-Mobile Comments at 4-17; RCA Initial Comments at 10-12.

[17] AT&T Supplemental Comments at 4.

Where there is market failure, regulation is necessary to restore competition. While a proposed regulation must be carefully examined on its merits, it is clear that certain government regulation is required to ensure a properly functioning competitive market, particularly in the case of access to spectrum and 4G devices. As RCA has stated, "spectrum is a finite, critical input for wireless carriers."[18] Because competition best serves consumers, the FCC must ensure that there is sufficient spectrum and access to devices to utilize that spectrum for multiple providers. AT&T claims that RCA and T-Mobile are inserting obstacles to "optimal" use of spectrum.[19] Rather, they are "obstacles" only to AT&T and Verizon, which would otherwise continue to consolidate their hold on the wireless marketplace, heading towards an entrenched duolopy. Maintaining appropriate "light touch" regulations, particularly to ensure competition in the mobile wireless marketplace, eliminates the need for significantly more burdensome regulation in the future after the duopoly is entrenched. RCA supports limited Commission action to enact "smart, targeted regulatory action when necessary to promote meaningful competition," as recently championed by Commissioner Clyburn.[20]

The Commission Should Immediately Mandate Interoperability in the Lower 700 MHz Band.

AT&T argues that RCA's and T-Mobile's requests that the Commission require interoperability in the 700 MHz band to promote competition are unjustified because the current band classes were internationally established.[21] Band Class 17 was established at AT&T's request, post auction, and it is attempting to leverage its manipulation of the international standard-setting process to prevent 4G LTE competition.[22] In addition, evidence that one Lower 700 MHz A Block carrier has introduced service does not mean that the problems created by AT&T's artificial band class segregation in the Lower 700 MHz band have been resolved.[23] U.S. Cellular itself has said it is "concerned that there will not be an industry solution forthcoming that will address interoperability in a reasonable time frame to move the LTE ecosystem forward absent regulatory intervention."[24]

AT&T also argues that no interoperability requirements should be imposed in the 700 MHz spectrum band because carriers can take advantage of the economies of scale in LTE device development by simply making variants of existing LTE devices distributed by AT&T and Verizon

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18 RCA Initial Comments at 6.

19 AT&T Supplemental Comments at 3.

20 Mignon Clyburn, Commissioner, Fed. Commc'ns Comm'n, Statement Before the Senate Committee on Commerce, Science, and Transportation: Oversight of the Federal Communications Commission (May 16, 2012).

21 AT&T Supplemental Comments at 16-17.

22 *See* Letter from Rebecca Murphy Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 06-150, 11-18, and 11-186, at 2 (filed Feb. 2, 2012) (discussing AT&T's manipulation of the standards-setting process).

23 *See, e.g.*, RCA Supplemental Comments at 6-8; T-Mobile Comments at 18-19.

24 Letter from Grant B. Spellmeyer, Executive Director - Federal Affairs & Public Policy, U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WT Docket No.s 12-69, 12-4, AU Docket No. 12-25, CC Docket No. 96-45, at 1-2 (filed May 9, 2012).

at a relatively small incremental cost.[25] As evidenced by the lack of competition in the 4G market, this statement is completely false. AT&T mischaracterizes the Vulcan Wireless LLC ("Vulcan") presentation to which it refers.[26] Vulcan's presentation demonstrated that manufacturers supporting AT&T's 700 MHz operations could move to the more inclusive 3GPP Band Class 12 from its exclusionary Band Class 17 without significant cost. Vulcan certainly did not say, nor is there any evidence to suggest, that Band Class 12 devices used by smaller carriers could be customized so that they could be produced in the same quantities as the 700 MHz LTE equipment produced for Verizon and AT&T.

Last, AT&T claims that the FCC should focus on removing interference, and the industry will resolve the band class issue.[27] AT&T overstates here, as it has in other proceedings, the technical impediments to achieving interoperability in the Lower 700 MHz band. To the extent that the FCC determines, in its pending proceeding, that there are such technical impediments, it should act to remove them. However, RCA notes that AT&T has submitted no evidence that proves its theoretical interference claims. Instead of urging the FCC to remove technical impediments to 700 MHz band interoperability, it has acted to create anti-competitive, proprietary band classes. To promote Lower 700 MHz interoperability, the FCC must address these claims in its Interoperability NPRM.[28] Consequently, the Commission should recognize in the *Sixteenth Report* the importance of mandating interoperability in the Lower 700 MHz band which will create the basis for the ultimate goal of interoperability throughout the entire 700 MHz band.

The Commission Is Not Prohibited from Adopting Auction-Specific Rules.

AT&T argues that any limitation on the amount of spectrum that could be awarded to any single auction participant pursuant to the Middle Class Tax Relief and Job Creation of 2012 (the "Spectrum Act") would violate the provisions of that Act.[29] AT&T reads the Spectrum Act too narrowly. As T-Mobile explained in its comments, Section 6404 of the Spectrum Act, while limiting the FCC's ability to prevent a party from participating in an auction under certain circumstances, does not prohibit the Commission from adopting general rules of applicability.[30] Indeed, the legislation expressly *preserves* the Commission's longstanding authority to "adopt and enforce rules of general applicability, including rules concerning spectrum aggregation that promote

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25 AT&T Supplemental Comments at 17.

26 *See* Letter from Michele C. Farquhar to Marlene Dortch, WT Docket No. 11-18 (December 5, 2011).

27 AT&T Supplemental Comments at 17.

28 *Promoting Interoperability in the 700 MHz Commercial Spectrum*, Notice of Proposed Rulemaking, WT Docket No. 12-69 (rel. Mar. 21, 2012).

29 *See* AT&T Supplemental Comments at 13-15.

30 *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, § 6404 (2012) ("Spectrum Act") (prohibiting the FCC from preventing a party from participating in an auction if they comply with auction procedures and meet the technical, financial, character, and citizenship qualifications that the Commission requires under sections 303(l)(1), 308(b), or 310 of the Communications Act, or would meet those qualifications by means approved by the Commission prior to the grant of a license); 47 U.S.C. § 309(j).

competition."[31] AT&T completely ignores the Commission's authority and obligation to adopt rules that promote competition. Accordingly, the Commission may adopt spectrum aggregation rules and apply them in, among others, the auction context.

In this regard, AT&T also suggests that the FCC's preserved authority to adopt and enforce rules of general applicability is limited to "establishing the caps, under which a successful bidder would be responsible, at the conclusion of an auction where it acquired spectrum, for undertaking divestitures or otherwise bringing itself into compliance with the total spectrum aggregation limits."[32] AT&T's interpretation of the FCC's authority is unsupported. The Spectrum Act does not restrict the FCC's authority to post-auction divestitures only. In fact, through passage of the Spectrum Act, Congress reaffirmed the Commission's role in supporting competition through spectrum management policies. As explained by Representative Fred Upton, the FCC retains its authority "to adopt and enforce rules of general applicability."[33] Representative Henry Waxman further explained, "…. Congress intends for the FCC to continue to promote competition through its spectrum policies…. [Congress] thus preserves the FCC's ability to require, among other things, the divestiture of specific spectrum, such as spectrum below 1 GHz, in order to promote competition."[34] The *Sixteenth Report* should recognize that the Commission can adopt whatever spectrum aggregation rules it sees fit to promote competition, including rules that prevent dominant carriers from stifling competition by stockpiling spectrum through an auction, especially in this overly concentrated market.

The Commission Should Recognize the Importance of Data Roaming to Competition.

While AT&T argues that RCA's and T-Mobile's concerns with respect to data roaming are "grossly premature,"[35] overwhelming industry concentration has increased the dependence on the few remaining nationwide carriers to provide roaming on commercially reasonable terms and conditions. As industry concentration increases, so does the ability and incentive of Verizon and AT&T to deny nationwide roaming on commercially reasonable terms and conditions. Data roaming is, and will continue to be, an important factor in assessing whether the wireless market is competitive. Therefore, RCA and T-Mobile expect that in the *Sixteenth Report* the Commission will explicitly recognize the importance of roaming to competition and will express its commitment to vigorously enforce its rules as a way to ensure that competition is enhanced.

Further, the Commission should continue to monitor the state of data roaming agreements, and step in where necessary to ensure that competitive carriers are in fact able to obtain roaming agreements on commercially reasonable terms and conditions. Because of the importance of roaming to competition, RCA encourages the Commission to strongly consider the use of strict criteria to evaluate roaming arrangements.

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31 *See* Spectrum Act § 6404.

32 AT&T Supplemental Comments at 14-15, n.36.

33 158 Cong. Rec. E238 (daily ed. Feb. 24, 2012) (statement of Rep. Upton).

34 158 Cong. Rec. E266 (daily ed. Feb. 28, 2012) (statement of Rep. Waxman).

35 AT&T Supplemental Comments at 18.

The Commission Should Revise Its Current Spectrum Screen to Account for the Differential Value of Spectrum.

AT&T makes several meritless claims challenging T-Mobile's proposal that the Commission adjust its current spectrum screen to reflect the differential value of spectrum in different spectrum bands.[36] *First*, AT&T argues that the "data-carrying capacity of all spectrum . . . is equal."[37] AT&T's claim is ridiculous. In the abstract, 10 megahertz of spectrum in one band may be able to support the same amount of data as 10 megahertz of spectrum in another band when a signal leaves an antenna. However, a carrier's ability to deliver data to customers over a geographic area using multiple-site architecture is dependent on propagation and other factors, many of which are band-dependent. As a result, the relevant inquiry is how much data a *system* designed with particular bands of spectrum can carry. The Commission has recognized that systems designed for different bands can carry varying amounts of overall data.[38] Therefore, it is simply not true that the "data-carrying" capacity of *systems* using different spectrum bands is equal.

Second, AT&T asserts that the spectrum screen already accounts for the different propagation characteristics of spectrum in different bands, because spectrum with propagation characteristics so poor as to be unable to support mobile wireless services is not included in the screen.[39] Other than omitting such spectrum from the screen, AT&T argues that no other propagation-related distinctions should be made because the propagation characteristics of all bands included in the screen are essentially the same.[40] AT&T ignores the laws of physics and specific FCC and Department of Justice ("DOJ") determinations. Just because all of the spectrum in the screen can support mobile wireless services does not mean that all spectrum bands included in the screen support these services equally well. In fact, both the FCC and the DOJ have explicitly recognized that all mobile wireless spectrum is *not* equal, noting specifically that spectrum below 1 GHz has better propagation characteristics than spectrum above 1 GHz.[41] Chairman Genachowski

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36 T-Mobile Comments at 6-9; *see also* RCA Supplemental Comments at 5 ("The FCC must revise the screen to reflect market realities during each transaction review.").

37 AT&T Supplemental Comments at 5.

38 *See, e.g.*, *Fifteenth Report* ¶ 297 (discussing that a licensee's particular mix of spectrum holdings affects its ability to provide efficient mobile wireless services, given the different spectrum characteristics of different bands); *id.* ¶ 307 ("[S]pectrum resources in different frequency bands have distinguishing features that can make some frequency bands more valuable or better suited for particular purposes. For instance, given the superior propagation characteristics of spectrum under 1 GHz, particularly for providing coverage in rural areas and for penetrating buildings, providers whose spectrum assets include a greater amount of spectrum below 1 GHz spectrum may possess certain competitive advantages for providing robust coverage when compared to licensees whose portfolio is exclusively or primarily comprised of higher frequency spectrum.").

39 AT&T Supplemental Comments at 6.

40 AT&T Supplemental Comments at 6-7.

41 *See, e.g.*, *Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition*, Public Notice, WT Docket No. 11-186, DA 11-1856, at 13 (rel. Nov. 3, 2011) ("The different propagation characteristics of different spectrum bands can influence how spectrum is used

recently similarly acknowledged the "obvious differences" in spectrum values.[42] While the Commission previously declined to "differentiate[ ] among bands based on specific propagation characteristics or purported distinctions in trading value,"[43] the Commission more recently indicated the importance of drawing such distinctions based on the different propagation and other characteristics of spectrum above and below 1 GHz.[44] Even AT&T recognized the value of these spectrum differences when, "in response to network issues stemming from its extensive introduction of smartphones, one of the key steps taken by AT&T to improve its network performance in large cities was modifying its network to put 3G traffic on its 850 MHz Cellular spectrum, which provided better in-building coverage than did its PCS spectrum."[45]

In spite of its own assessment, AT&T also asserts that "higher band spectrum may actually be better suited for . . . urban deployments."[46] As AT&T itself and the Commission have

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to deliver mobile wireless services to consumers."); *Application of AT&T Inc. and Qualcomm Incorporated for Consent to Assign Licenses and Authorizations*, Order, 26 FCC Rcd 17589, ¶ 49 (2011) ("*AT&T/Qualcomm Order*") (noting that "[t]he more favorable propagation characteristics of lower frequency spectrum (*i.e.*, spectrum below 1 GHz) allow for better coverage across larger geographic areas and inside buildings," when compared with spectrum above 1 GHz"); *Fifteenth Report* ¶ 292 ("It is well established that lower frequency bands – such as the 700 MHz and Cellular bands – possess more favorable intrinsic spectrum propagation characteristics than spectrum in higher bands."); *United States v. Verizon Communications Inc. and ALLTEL Corp.*, Competitive Impact Statement, Case No. 08-cv-1878, at 5-6 (filed Oct. 30, 2008), *available at* http://www.justice.gov/atr/cases/f238900/238947.pdf (stating that "because of the characteristics of PCS spectrum, providers holding this type of spectrum generally have found it less attractive to build out in rural areas"); *United States v. AT&T Inc. and Dobson Communications Corp.*, Competitive Impact Statement, Case No. 1:07-cv-01952, at 5, 11, 13 (filed Oct. 30, 2007), *available at* http://www.justice.gov/atr/cases/f227300/227309.pdf (asserting that "the propagation characteristics of [1900 MHz PCS] spectrum are such that signals extend to a significantly smaller area than do 800 MHz cellular signals. The relatively higher cost of building out 1900 MHz spectrum, combined with the relatively low population density of the areas in question, make it unlikely that competitors with 1900 MHz spectrum will build out their networks to reach the entire area served by" the two 800 MHz Cellular providers).

42 Letter from the Honorable Julius Genachowski, Chairman, FCC, to the Honorable Fred Upton, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, at 3 (Dec. 20, 2011).

43 *Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, Memorandum Opinion and Order, 23 FCC Rcd 17570, ¶ 63 (2008).

44 *See, e.g.*, *AT&T/Qualcomm Order* ¶ 49 (finding it "prudent to inquire about the potential impact of [an acquirer's] aggregation of spectrum below 1 GHz as part of the Commission's case-by-case analysis" of spectrum transactions); *see also Fifteenth Report* ¶ 307.

45 *Fifteenth Report* ¶ 294.

46 AT&T Supplemental Comments at 10.

recognized, lower band spectrum is particularly critical in urban areas to penetrate buildings.[47] In addition, even if carriers want to limit propagation to foster frequency re-use, antenna design and similar measures may be preferred to simply using higher band spectrum.

Third, AT&T criticizes proposals to modify the spectrum screen by arguing that the marketplace already accounts for the cost differences in implementing networks in different bands because different spectrum bands fetch different prices.[48] AT&T misses the point. In this context, RCA and T-Mobile are not concerned with pricing of spectrum in the marketplace. Rather the FCC must factor spectrum value when considering limits on aggregation of spectrum – whether in the secondary market or directly from the FCC. AT&T's example – that T-Mobile's proposed screen would treat a carrier acquiring 20 megahertz of AWS spectrum while selling 10 megahertz of 700 MHz spectrum in a given city as having no impact on spectrum concentration – is right – for purposes of determining whether the Commission should permit that carrier to acquire additional spectrum.[49] The Commission must review the relative impact of a carrier acquiring significant spectrum in lower bands compared to upper bands.

Fourth, AT&T asserts that "any attempt to weigh spectrum based on propagation-related 'value' differences would be arbitrary in the extreme."[50] T-Mobile's proposed schedule of spectrum weights is just one example of how the Commission could take into account the different values of different spectrum in adjusting the screen to better reflect market conditions.[51] The traditional market-by-market spectrum screen analysis fails to properly assess the actual competitive imbalance. The Commission must recognize that the dominant Verizon/AT&T duopoly – and their control of the lion's share of prime broadband spectrum – makes it increasingly difficult for new entrants or other smaller carriers to provide effective competition in the industry.[52] The Commission may wish to develop its own methodology. Merely because different valuation methods exist does not mean that the Commission should simply treat all spectrum alike, particularly when the Commission has

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47 *See, e.g.*, *Fifteenth Report* ¶ 294 (discussing "the relative advantages of deploying lower frequency spectrum in urban areas due to its superior in-building coverage characteristics"); *AT&T/Qualcomm Order* ¶ 49 (explaining that spectrum below 1 GHz allows for better coverage inside buildings).

48 AT&T Supplemental Comments at 8-9.

49 AT&T Supplemental Comments at 9.

50 AT&T Supplemental Comments at 9-11.

51 *See* Petition to Deny of T-Mobile USA, Inc., WT Docket No. 12-4, at 33, n.106 (filed Feb. 21, 2012) (noting that in accounting for the unequal values of spectrum, "the Commission could rely on several studies performed by the investment community to accord different weights to the frequency bands in the spectrum screen" and recognizing that the "specific value weights would have to be adjusted from time to time based on current market conditions"); *see also id.* at Exhibit C, Declaration of Peter Cramton.

52 Petition to Condition or Otherwise Deny Transactions of RCA—The Competitive Carriers Association, WT Docket No. 12-4, at 8-10 (filed Feb. 21, 2012). RCA also has requested that the Commission consider a spectrum screen that is different for the two dominant carriers, AT&T and Verizon. *Id.* at 52-53.

specifically found to the contrary.[53] Moreover, like the screen itself, the Commission can and should adjust any spectrum valuation measure periodically as changing market and technology conditions warrant.

Finally, AT&T argues that because Verizon is acquiring high-band advanced wireless service ("AWS") spectrum in the SpectrumCo transaction and is willing to give up low-band 700 MHz spectrum, high-band spectrum must be as valuable as low-band spectrum.[54] In general, 700 MHz spectrum is more valuable for mobile broadband services than AWS spectrum, and therefore should be weighted more heavily than AWS spectrum in the spectrum screen.[55] The facts of the SpectrumCo transaction make the evaluation different in that case, which is consistent with the Commission's use of the spectrum screen as a preliminary tool to identify markets for further competitive analysis.[56] The 700 MHz A Block spectrum that Verizon proposes to divest is not LTE-ready because AT&T bifurcated the Lower 700 MHz band, stranding Lower 700 MHz A Block licensees with economical access to devices.[57] On the other hand, the AWS spectrum is more valuable than might otherwise be apparent because it represents a nationwide footprint and is LTE-ready. However, Verizon's interest in these specific authorizations does not affect the relative value of lower and upper band spectrum generally.

In sum, AT&T's real issue with revising the screen is that it would allow competitive carriers to compete more effectively with AT&T.[58] While RCA agrees with AT&T that the Commission's responsibility "is to protect competition, not competitors,"[59] the most effective way to protect competition in this instance, which the Commission should recognize in the *Sixteenth Report*, is to ensure that all competitors have access to the scarce, tax-payer owned resource that guarantees competition – spectrum.

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53 *See, e.g., AT&T/Qualcomm Order* ¶ 49 ("[S]pectrum resources in different frequency bands can have widely disparate technical characteristics that affect how the bands can be used to deliver mobile services.").

54 AT&T Supplemental Comments at 11-12.

55 *See* Letter from Jean L. Kiddoo, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, at 4 (filed May 1, 2012) ("T-Mobile May 2012 Letter").

56 *See, e.g., AT&T/Qualcomm Order* ¶ 31 ("The Commission examines the effects of spectrum aggregation on the marketplace on a case-by-case basis. To do so, the Commission has used an initial screen to identify markets where the spectrum amounts held by a transferee post-transaction provide reason for further competitive analysis of spectrum concentration."); *Fifteenth Report* ¶ 281 (noting that the Commission uses the spectrum screen as a preliminary tool to identify particular markets in which the spectrum aggregation exceeds a pre-determined threshold and then conducts "further analysis to determine whether sufficient spectrum capacity would be available to other providers to compete effectively" in the identified markets).

57 T-Mobile May 2012 Letter at 4.

58 AT&T Supplemental Comments at 12-13.

59 AT&T Supplemental Comments at 13 (*quoting Application of Alascom, Inc., AT&T Corp. and Pacific Telecom, Inc. for Transfer of Control of Alascom, Inc. from Pacific Telecom, Inc. to AT&T Corp.*, Order and Authorization, 11 FCC Rcd 732, ¶ 56 (1995)).

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As the foregoing demonstrates, AT&T's Supplemental Comments are without merit. Competitive imbalances currently exist in the mobile wireless marketplace, and swift action by the Commission is needed to correct them. Adopting the specific proposals advanced by RCA and T-Mobile will improve competition, thus driving innovation, spurring investment, and creating value for consumers.

Please contact us with questions or comments.

Sincerely,

/s/
Steven K. Berry
President & CEO